

*** NOT FOR PUBLICATION ***

NO. 25881

IN THE SUPREME COURT OF THE STATE OF HAWAII

HAWAII VENTURES, LLC,
Plaintiff/Counterclaim-Defendant/Appellee/
Appellant/Cross-Appellant/Cross-Appellee

vs.

OTAKA, INC. and YUKIO TAKAHASHI,
Defendants/Counterclaim-Plaintiffs/Cross-Claim
Defendants/Appellees/Cross-Appellants/Cross-Appellees

and

TAKAO BUILDING CO., LTD. (TAKAO), K.K. DAINI SEVEN (DAINI SEVEN),
HAWAIIAN WAIKIKI BEACH, INC.,
Defendants/Counterclaim-Plaintiffs/Appellees/Cross-
Appellants/Cross-Appellees

and

ALAKA'I MECHANICAL CORPORATION, and HEWLETT-PACKARD COMPANY,
Defendants/Appellees/Cross-Appellees

and

BUSINESS MANAGEMENT GROUP, INC.,
Defendant/Cross-Claim Plaintiff/Appellee/Cross-Appellee

and

BEACH SNACK EXPRESS, INC., dba HAMACHAYA JUBEI, and
HAWAII ENERGY MANAGEMENT CO., LLC
Defendants/Appellees/Cross-Appellees

and

ILWU LOCAL 142, AFL-CIO
Intervenor-Defendant/Appellant/Appellee/Cross-Appellee

and

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THEODORE H. SMYTH, AS TRUSTEE OF THE SMYTH FAMILY TRUSTS, and
KARL W. WILLIG
Intervenors-Defendants/Counterclaim-
Plaintiffs/Appellees/Appellants/Cross-Appellees

and

ARGONAUT INSURANCE COMPANY,
Intervenor-Defendant/Appellee/Cross-Appellee

and

LEUCADIA NATIONAL CORPORATION,
Additional Counterclaim-Defendant/Appellee/Cross-Appellee

and

PATRICIA KIM PARK,
Receiver/Appellee/Cross-Appellee

and

WILLIAM D. UDANI, MYRNA F. COSTA, MARY ANN E. ACIO, JACINTA
AGONOY, ROSITA A. ANCHETA, ZOSIMO A. ARISTA, GARY C. M. AU,
TOMASA E. BALIJNASAY, ERNA M. BAQUIEL, NELIA C. BOLOSAN, CATHY B.
CABERTO, LYDIA CABICO, HALARIO G. CABILES, PERLITA N. CABUENA,
CONRADO A. CANDELARIO, ERLINDA C. CORRALES, PO WU CHAN, PATRICIA
M. CHING, WAYNE K. Y. CHUNG, ROSITA F. COLOMA, SINFOROSA S.
CORPUZ, DEBORAH J. DAVIS, BINATE DELLATAN, ANACLETA DOMINGO,
PRISCILLA DUNAWAY, DELPHINA J. FULLER, SEGIBERTO G. GONO, YUNG
HEE HAN, PATTI R. HONJIYO, JOHNNY Y. ILORETA, RICHARD D. JAEGER,
JOSEPH KAUNAMANO, JR., MAILE F. KALAPA, WILLEDA KEPA, ANNA KIM,
TINA M. KIM, ANDRES C. LACAR, LEONILA G. LAUER, ROSITA A. LAZO,
JR., KARL LINDO, KATHLEEN L. LUKA, KEUM JA LEE, NESTOR S.
MADAMBA, ANITA Z. MAGALLANES, GERTIE P. MAGAOAY, LADDAR C.
MALLARE, MAGDALENA S. MANDING, FLORENCIA C. MANERA, IGOA T.
MULLER, DAVID CHI KEUNG NG, MARCUS NGIRTURONG, CHAUNCEY C.
NICOLA, III, DAWSON B. VON OELHOFFEN, JERRY A. PABRO, EGMIDIA T.
PASCUA, LETICIA T. PAUSO, DOMINGA PERALTA, ANA T. QUIBEANTOS,
JUANITA RAMOS, ENCARNACION V. RIVERA, ROBERT ROWLAND, SCOTT S.
SATO, SILVERIANO SEBASTIAN, VAIMOANA T. SEVELO, MARY PAT SOLIVEN,
YUN HIE TANIGUCHI, SETAITA T. TAULANI, EMILIA B. TUPINIO,
ROSEMARIE A. UDANI, ANECITA F. UGALE, JUANITA G. UNGOS,
LONGOMAILEA VAIOLETI, JUDITH VERSOZA, CHUNG LEONG WONG, DOLORES
A. YOKOI, KENNETH K. YOSHIDA, NOBUKO YOSHIDA, and ANDY S. C.

YOUNG

Intervenors/Appellees/Appellants/Cross-Appellees

APPEALS FROM THE FIRST CIRCUIT COURT
(CIV. NO. 00-1-2427)

ORDER DISMISSING APPEALS AND CROSS-APPEALS

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of the record, it appears that we lack jurisdiction over these appeals and cross-appeals case because the Honorable Karen N. Blondin's May 14, 2003 final judgment, May 14, 2003 deficiency judgment, and June 18, 2003 judgment do not satisfy the requirements for an appealable final judgment.

With respect to the requirement of a final judgment, order or decree pursuant to HRS § 641-1(a) (1993), "[t]his court has previously noted that foreclosure cases are bifurcated into two separately appealable parts: (1) the decree of foreclosure and the order of sale, if the order of sale is incorporated within the decree; and (2) all other orders." Beneficial Hawai'i, Inc. v. Casey, 98 Hawai'i 159, 165, 45 P.3d 359, 365 (2002) (citations and internal quotation marks omitted). Therefore, although the foreclosure decree in part-one of a foreclosure case is immediately appealable upon entry, the "matters subsequent to the foreclosure decree, [i.e., in part-two of a foreclosure case,] such as the confirmation of sale or the issuance and enforcement of the writ of possession . . . would have to wait until entry of the circuit court's final order in the case." Id. (citation omitted). "[T]he last and final order . . . [in part-two of a foreclosure case] is usually the deficiency judgment." Security Pacific Mortgage Corporation v. Miller, 71 Haw. 65, 70, 783 P.2d 855, 858 (1989) (citation and internal quotation marks omitted); Hoge v. Kane, 4 Haw. App. 246, 247, 663 P.2d 645, 647 (1983) ("In foreclosure cases, which result in a deficiency, the last and final order . . . is usually the deficiency judgment."). In the instant case, the Appellants and Cross-Appellants are attempting to appeal from the three

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above-mentioned judgments in part-two of this foreclosure case.

In order to implement the finality requirement under HRS § 641-1(a) (1993), Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP) requires the entry of a separate judgment. "An appeal may be taken from circuit court orders resolving claims against parties only after the orders have been reduced to a judgment and the judgment has been entered in favor of and against the appropriate parties pursuant to HRCPP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

[I]f a judgment purports to be the final judgment in a case involving multiple claims or multiple partes, the judgment (a) must specifically identify the party or parties for and against whom the judgment is entered, and (b) must (i) identify the claims for which it is entered, and (ii) dismiss any claims not specifically identified[.]

Id.

For example: "Pursuant to the jury verdict entered on (date), judgment in the amount of \$___ is hereby entered in favor of Plaintiff X and against Defendant Y upon counts I through IV of the complaint." A statement that declares "there are no other outstanding claims" is not a judgment. If the circuit court intends that claims other than those listed in the judgment language should be dismissed, it must say so; for example, "Defendant Y's counterclaim is dismissed," or "Judgment upon Defendant Y's counterclaim is entered in favor of Plaintiff/Counter-Defendant Z," or "all other claims, counterclaims, and cross-claims are dismissed."

Id. at 119-20 n.4, 869 P.2d at 1338-39 n.4 (emphases added).

"[A]n appeal from any judgment will be dismissed as premature if the judgment does not, on its face, either resolve all claims against all parties or contain the finding necessary for certification under HRCPP [Rule] 54(b)."
Id. at 119, 869 P.2d at 1338.

Plaintiff/Counterclaim-Defendant/Appellee/Appellant/

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Cross-Appellant/Cross-Appellee Hawaii Ventures, LLC, asserted its complaint for foreclosure against multiple parties. Furthermore, various other parties asserted claims, counterclaims and cross-claims. Despite the existence of multiple parties and multiple claims, none of the three judgments in part-two of this foreclosure case specifically identifies and resolves all of the multiple claims against all of the multiple parties. Although some of the judgments resolve some of the claims, none of the judgments either (1) dismisses all other claims, counterclaims, and cross-claims, or (2) contains an express finding of no just reason for delay in the entry of judgment pursuant to HRCF Rule 54(b). Therefore, the May 14, 2003 deficiency judgment, the May 14, 2003 final judgment, and the June 18, 2003 judgment do not satisfy the HRCF Rule 58 separate judgment requirement under the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, the appeals and cross-appeals are premature. Accordingly,

IT IS HEREBY ORDERED that the appeals and cross-appeals are dismissed for lack of jurisdiction.

DATED: Honolulu, Hawai'i, September 16, 2003.